

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax. (This is a GIL).

July 18, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 25, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at [www.revenue.state.il.us/Laws/regs/part1200/](http://www.revenue.state.il.us/Laws/regs/part1200/).

In your letter, you have stated and made inquiry as follows:

AAA is in the business of developing and licensing database software to customers around the world. One of our corporate licensing customers in Illinois has provided us Illinois Regulation, Sec 130.1935 and requested for a tax refund of \$\$\$ from their licensing order. I have enclosed a copy of their P.O and Sec. 130.1935. They claim that our software license to them is exempt due to the following reasons:

1. It is evidenced by a written agreement signed by the licensor and the customer.
2. It restricts the customer's duplication and use of the software.
3. It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party).
4. The vendor will provide another copy at minimal or no charge if the customer loses or damages the software, and
5. The customer must destroy or return all copies of the software to the vendor at the end of the license period.

We are located in CITY/STATE and our software is shipped directly from STATE to this customer in Illinois. We also have a sales employee in Illinois who represents us from her home office. Would you please advise us if our customer is entitled to tax exempt purchases of software licenses from AAA. We would appreciate for your quick response since we would like to resolve the matter with our customer as soon as possible.

If you have any questions or need further information, please contact us. Thanks in advance for your help.

86 Ill. Adm. Code 130.1935, Computer Software, has been recently amended. See enclosed revised copy of Section 130.1935. Generally, sales of “canned” computer software are taxable retail sales in Illinois. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c).

Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers’ Occupation Tax. A license of software is not a taxable retail sale if:

- A) It is evidenced by a written agreement signed by the licensor and the customer;
- B) It restricts the customer’s duplication and use of the software;
- C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) The licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) The customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

In the context of a General Information Letter, the Department cannot give you a binding ruling as to whether the agreement you attached to your letter meets the requirements of Section 130.1935. From the information you submitted it appears that the agreement was taxable when it was first entered into. The amount that was charged when the agreement was entered into is subject to tax. The effect the later amendment had on the taxability of the original agreement cannot be determined in the context of a General Information Letter.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.